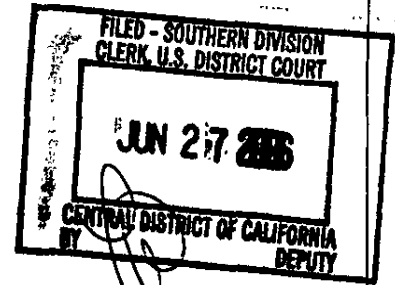


Vallier v. Baca

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

CARL ANTHONY VALLIER,
 Petitioner,

vs.

LEE BACA,

Respondent.

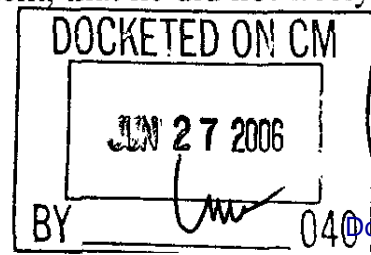
Case No. CV 06-3865-AHM (RNB)

REPORT AND RECOMMENDATION
 OF UNITED STATES MAGISTRATE
 JUDGE

This Report and Recommendation is submitted to the Honorable A. Howard Matz, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California.

PROCEEDINGS

On June 20, 2006, petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Pet.") herein. The Petition purports to be directed to petitioner's May 17, 2003 Los Angeles Superior Court conviction for indecent exposure, following petitioner's plea of nolo contendere. Petitioner appears to be claiming that his attorney misadvised him to plead no contest, that he was illegally sent to prison in violation of the terms of his plea agreement, that he did not freely



1 and intelligently waive his right to a jury trial, and that no one explained to him the
2 nature and consequences of his plea.

4 DISCUSSION

5 As a matter of comity, a federal court will not entertain a habeas corpus petition
6 unless the petitioner has exhausted the available state judicial remedies on every
7 ground presented in the petition.¹ Rose v. Lundy, 455 U.S. 509, 518-22, 102 S. Ct.
8 1198, 71 L. Ed. 2d 179 (1982). The habeas statute now explicitly provides that a
9 habeas petition brought by a person in state custody "shall not be granted unless it
10 appears that-- (A) the applicant has exhausted the remedies available in the courts of
11 the State; or (B)(i) there is an absence of available State corrective process; or (ii)
12 circumstances exist that render such process ineffective to protect the rights of the
13 applicant." 28 U.S.C. § 2254(b)(1). Moreover, if the exhaustion requirement is to
14 be waived, it must be waived expressly by the State, through counsel. See 28 U.S.C.
15 § 2254(b)(3).

16 Exhaustion requires that the prisoner's contentions be fairly presented to the
17 state courts, and be disposed of on the merits by the highest court of the state.
18 Carothers v. Rhay, 594 F.2d 225, 228 (9th Cir. 1979). A claim has not been fairly
19 presented unless the prisoner has described in the state court proceedings both the
20 operative facts and the federal legal theory on which his claim is based. See Duncan
21 v. Henry, 513 U.S. 364, 365-66, 115 S. Ct. 887, 130 L. Ed. 2d 865 (1995); Picard v.
22 Connor, 404 U.S. 270, 275-78, 92 S. Ct. 509, 30 L. Ed. 2d 438 (1971); Johnson v.
23 Zenon, 88 F.3d 828, 830 (9th Cir. 1996). A federal court may raise the failure to
24

25 ¹ The Court notes that only one of the four separate grounds for relief
26 alleged in the Petition is expressly framed as a federal constitutional claim--i.e.,
27 Ground 1. However, even if petitioner's other claims could be reframed as federal
28 constitutional claims, they still would be unexhausted for the reasons discussed
herein.

1 exhaust issue sua sponte and may summarily dismiss on that ground. See Stone v.
2 San Francisco, 968 F.2d 850, 856 (9th Cir. 1992), cert. denied, 506 U.S. 1081 (1993);
3 Cartwright v. Cupp, 650 F.2d 1103, 1104 (9th Cir. 1982) (per curiam), cert. denied,
4 455 U.S. 1023 (1982); see also Granberry v. Greer, 481 U.S. 129, 134-35, 107 S. Ct.
5 1671, 95 L. Ed. 2d 119 (1987).

6 Petitioner has the burden of demonstrating that he has exhausted available state
7 remedies. See, e.g., Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982). Here, it
8 plainly appears from the face of the Petition that petitioner cannot meet this burden
9 with respect to any federal constitutional claims which he desires to pursue herein.
10 In response to the question, “[d]id you appeal from the conviction of sentence,”
11 petitioner checked off the “no” box. (See Pet. at ¶ 3). Although he did not check off
12 either box in response to the question, “[o]ther than a direct appeal, have you
13 previously filed any petitions, applications or motions with respect to this conviction
14 in any court, state or federal,” he crossed out the sections where he was supposed to
15 describe such filings. (See Pet. at ¶ 6). Moreover, in response to the question, “[i]f
16 your answer to 6 was NO, explain briefly why you did not seek post-conviction relief
17 in the state courts,” petitioner responded: “Did not know of any post-conviction
18 relief, Nor have I had the opportunity. I am doing most all my time given in a state
19 reception center and the Los Angeles Jail.” (See Pet. at ¶ 9).

20 If indeed it were clear that the California Supreme Court would hold that
21 petitioner’s unexhausted federal constitutional claims were procedurally barred under
22 state law, then the exhaustion requirement would be satisfied.² See Castille v.
23

24 ² In that event, although the exhaustion impediment to consideration of
25 petitioner’s claim on the merits would be removed, federal habeas review of the claim
26 would still be barred unless petitioner could demonstrate “cause” for the default and
27 “actual prejudice” as a result of the alleged violation of federal law, or demonstrate
28 that failure to consider the claim would result in a “fundamental miscarriage of
(continued...)

1 Peoples, 489 U.S. 346, 351-52, 109 S. Ct. 1056, 103 L. Ed. 2d 380 (1989); Johnson
 2 v. Zenon, 88 F.3d 828, 831 (9th Cir. 1996); Jennison v. Goldsmith, 940 F.2d 1308,
 3 1312 (9th Cir. 1991). However, it is not "clear" here that the California Supreme
 4 Court will hold that petitioner's federal constitutional claims are procedurally barred
 5 under state law. See, e.g., In re Harris, 5 Cal. 4th 813, 825, 21 Cal. Rptr. 2d 373, 378,
 6 855 P.2d 391 (1993)(granting habeas relief where petitioner claiming sentencing
 7 error, even though the alleged sentencing error could have been raised on direct
 8 appeal); People v. Sorensen, 111 Cal. App. 2d 404, 405, 244 P.2d 734 (1952)(noting
 9 that claims that fundamental constitutional rights have been violated may be raised
 10 by state habeas petition). The Court therefore concludes that this is not an
 11 appropriate case for invocation of either "exception" cited above to the requirement
 12 that a petitioner's federal claims must first be fairly presented to and disposed of on
 13 the merits by the state's highest court.

14 15 RECOMMENDATION

16 IT THEREFORE IS ORDERED that the District Court issue an Order: (1)
 17 approving and adopting this Report and Recommendation; and (2) directing that
 18 Judgment be entered denying the Petition and summarily dismissing this action
 19 without prejudice for failure to exhaust state remedies.

20
21 DATED: June 26, 2006

22
23 
 24 ROBERT N. BLOCK
 UNITED STATES MAGISTRATE JUDGE
 25

26
 27 ²(...continued)
 28 justice." See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed.
 2d 640 (1991).